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No.

IN THE
Supreme Court of the United States
October Term, 1989

NICOLE LAURENCE,

Petitioner,

vs.

MR. & MRS. ANONYMOUS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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QUESTIONS PRESENTED FOR REVIEW

(1) DOES THE CONFLICT OF INTEREST IMPUTED BY THE CODE OF PROFESSIONAL RESPONSIBILITY TO AN ATTORNEY, WHO WHILE PURPORTING TO REPRESENT A BIRTH-MOTHER IN THE SURRENDER OF HER BABY TO ADOPTIVE PARENTS, ALSO ACTS AS INTERMEDIARY BETWEEN THEM, CONSTITUTE A DEPRIVATION OF THE BIRTH-MOTHER'S DUE PROCESS RIGHTS TAINTING ALL SUBSEQUENT ADOPTION PROCEEDINGS?

(2) DOES NEW YORK'S DOMESTIC RELATIONS LAW WHICH GIVES A NATURAL MOTHER THE "RIGHT" TO REVOKE AN EXTRA-JUDICIAL CONSENT TO ADOPTION WITHIN FORTY-FIVE DAYS BUT MAKES REVOCATION EFFECTIVE ONLY IF SHE THEN PREVAILS AT A "BEST INTERESTS OF THE CHILD" HEARING WHICH SHE CANNOT WIN, UNCONSTITUTIONALLY DEPRIVE HER OF HER LIBERTY INTEREST TO RAISE HER OWN CHILD IN VIOLATION OF THE DUE PROCESS CLAUSE?

PARTIES

Nicole Laurence, Petitioner; Mr. & Mrs. Anonymous,* Respondents. "Baby L." (the subject child) was granted party status and independent representation by court-appointed law guardian in the *nisi prius* court; Robert Abrams, Attorney General of New York State, in his statutory capacity. (Constitutionality of a New York State statute is drawn in question. 28 U.S.C. 2403(b) may be applicable).

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*Under New York law, identities of adoptive parents are sealed and unknown to Petitioner.

TABLE OF CONTENTS

Page

Questions Presented For Review i

Parties i

Table of Authorities iii

Opinions Below 1

Jurisdiction 1

Statutes Involved 2

Statement of the Case 2

Reasons for Granting The Writ 8

POINT ONE—The Conflict of Interest on the Part of Petitioner's Attorney Was an *Ipso Facto* Deprivation of Due Process Under the 14th Amendment Which Tainted All Subsequent Proceedings .....

POINT TWO—The New York Domestic Relations Law Which Requires That a Natural Mother Prevail At a "Best Interests" Hearing as a Condition Precedent to Return of Her Baby Unconstitutionally Deprives All Natural Mothers, Appellant Included, of the Constitutionally Protected Right of a Mother to Keep and Raise her Own Child ...10

Conclusion 20

Appendix A—Order Of New York Court Of Appeals Denying Leave To Appeal dated June 15, 1989 .....1a

Appendix B—Opinion And Order Of Appellate Division, Second Department dated November 28, 1988.....2a

Appendix C—Opinion And Order Of Family Court, Richmond County, dated July 1, 1988.....7a

Appendix D—Final Judgment Of Family Court, Richmond County dated May 2, 1989 .....14a

TABLE OF AUTHORITIES

Cases *Pages*

Anonymous (Matter of), 33 N.Y. 2d 541 15

Caban v. Mohammed, 441 U.S. 380 11

Calynn M.G. (Matter of), 137 Misc. 2d 1005.....10

Claudia "PP" (Peo. ex rel.) v. Sackey, 40 A.D. 2d 130.....15

Fuentes v. Shevin, 407 U.S. 67 19

K., Sarah (Matter of), 66 N.Y. 2d 223, cert. den. 475 U.S. 1108 15,18

Kropps v. Shepsky, 305 N.Y. 465 15

Petition of Lau Ow Ben, 141 U.S. 583 9

Lassiter v. Department of Social Services, 452 U.S. 18..11,12,13

Lehr v. Robertson, 463 U.S. 248 10

Matthews v. Eldridge, 424 U.S. 319 12

Meyer v. Nebraska, 262 U.S. 390.....10

Pierce v. Society of Sisters, 268 U.S. 510.....10

Prince v. Massachusetts, 321 U.S. 158 10

Quilloin v. Walcott, 434 U.S. 246 11

Santosky v. Kramer, 455 U.S. 745.....11,12,13

Scarpetta v.Spence Chapin Adoption Service, 28 N.Y. 2d 185 15

Stanley v. Illinois, 405 U.S. 645 11

In re Woods, 143 U.S. 202 9

Wood v. Georgia, 450 U.S. 261 8

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OPINIONS BELOW

Judgment of the trial court rendered in the Family Court of the State of New York, County of Richmond. Opinion of the Court was unpublished. Reproduced in appendix hereto.

Appellate Division, Second Department, decision and order reported officially at 144 A.D. 2d 674 and unofficially at 534 N.Y.S. 2d 706.

Motion for leave to appeal was denied by the New York Court of Appeals by order dated and entered June 15, 1989 (74 N.Y. 2d 606; __N.Y.S. 2d__). No opinion rendered.

JURISDICTION

The New York Court of Appeals denied leave to appeal on June 15, 1989. This petition is timely filed within ninety (90) days of said order.

Jurisdiction is invoked pursuant to 28 U.S.C. 1257.

STATUTES INVOLVED

U.S. CONSTITUTION, 14TH AMENDMENT, NEW YORK DOMESTIC RELATIONS LAW 115b.

STATEMENT OF THE CASE

Nicole Laurence, petitioner, is the natural mother of BABY L. born January 12, 1988. This litigation involves her efforts to revoke her out-of-court consent to adoption of her baby and to regain custody. At the time petitioner became pregnant, she was seventeen, unmarried and living with her parents, from whom she concealed her pregnancy for four months. Her mother was the dominant personality in the household.

On October 29, 1987, petitioner, then almost in her seventh month of pregnancy, was brought by her parents to the office of one Dr. Peter Pelliteri, an obstetrician who then rendered prenatal care. The record in the *nisi prius* court indicates that in response to a statement by petitioner's mother that she wished to arrange for adoption of her daughter's baby, Dr. Pelliteri referred the family to one John DiPalma, Esq., a local attorney who was his next door neighbor, advising that Mr. DiPalma would "handle such matters." Dr. Pelliteri then told his nurse, one Adele Romano, about the adoptable baby soon to be born. Mrs. Romano's sister and her husband ultimately became the adoptive parents of petitioner's baby.

Mr. DiPalma admitted on record that the two initial conferences in his office were not with his purported client, but with her mother; that prior to the birth of the child, he saw his purported client only once; that he was aware that she was having difficulty with the adoption consent; that although he asked his purported client's parents to leave the room, a request which was refused, he nevertheless continued with this most confidential and privileged meeting even in the face of the parents' refusal to leave, and even in the face of his awareness that petitioner's mother was "essentially, at the very least, engineering, or doing the talking for the family." He also admitted that at no time during this initial meeting did he show petitioner any legal papers—that, in fact, she did not see any legal papers what-

soever until two days after delivery of her baby (January 14, 1988), when he brought them to her in the hospital to be signed. Even in the hospital, his representation consisted of bringing petitioner a pile of legal documents for her signature, which he left with her while he went about his business elsewhere. For the scant moments he was present in her room in what should have been, at the very least, a private meeting, both the head nurse and the person to whom the petitioner's baby was transferred were present.

On that same morning (January 14) when the baby was taken from petitioner in the hospital, Mr. DiPalma "met the prospective adoptive parents at my office;" told "them to wait at the office;" and because the attorney for the adoptive parents was purportedly "engaged in another court some place else," he proceeded to the hospital alone, where he went up to petitioner's room. He then gave her the forms to sign; had no knowledge of whether or not she read them; and further admitted that he did not read them to her, limiting himself instead to going over "a few of them" and *critiquing* (whatever that meant) them to her.

Finally, "when I got the release, when the doctor appeared, Dr. Pelliteri, and discharged Nicole, I then said 'We're going to have to leave the hospital and proceed with this, sign this . . .' yes, and then we had them sign."

The following exchange on record is significant.

> "Q: Immediately before she signed it, immediately before Nicole Laurence signed the document, did you again explain that individual document to her?
>
> A: Yes, I told her what it was, yes.
>
> Q: Did you read the entire document to her?
>
> A: A third time, no."

It is significant that Mr. DiPalma, who did not read the extra-judicial consent to petitioner at the hospital because she was already purportedly familiar with it from her first and only prior meeting with him at the office, admitted, with reference to this very meeting in his office, that "I didn't read it to her because there was no point."

Mr. DiPalma's wife picked up the baby at the hospital while he waited in the car. They drove together to his office where the adoptive parents were waiting for delivery of the baby to them. At no time during this entire transaction was any attorney for the adoptive parents present or in any way involved. (It is claimed that he finally appeared "later.")

Mr. DiPalma arranged to pay the hospital bill "on behalf of" the attorney for the adoptive parents. It was the adoptive parents who paid Mr. DiPalma's fee.

Nicole Laurence immediately had regrets about giving up her baby and although the challenged statute gave her 45 days purportedly to revoke her consent, she did so within the first ten days. The adoptive parents then petitioned the Family Court for adoption of the baby. (cf. Domestic Relations Law 115b, *infra*).

THE STATUTORY SCHEME: Domestic Relations Law Section 115b, referring to extra-judicial (viz. out of court) consents to adoption contemplates two basic scenarios:

(a) Where the extra-judicial consent is attacked on the basis of ". . . fraud, duress or coercion in the execution or inducement of an adoption consent" (subdivision 7), i.e., where the attack is upon the *ab initio* validity of the consent itself by virtue of some defect in its execution, it may be voided by the trial court in the same manner as any other contract in which some intervening factor interfering with a true meeting of the minds of the contracting parties presents itself. (Indeed, petitioner's original attack upon the consent was framed under this subdivision based on the one hand, upon the complete subjugation of her will to that of her parents, and, on the other, upon the overreaching conduct of her attorney).

(b) On the other hand, a valid extra-judicial consent which concededly comes into *de jure* existence may purportedly be revoked within a specified time period of 45 days upon no showing whatsoever, provided however, that should this revocation be resisted by the adoptive parents, a so-called "best interests" hearing is triggered in which the birth-mother and the adoptive parents appear before the court on an equal footing with no preference shown the natural mother on the basis of her having given birth to the child. This statute accordingly requires that the court make a determination as to whether or not a natural mother can revoke her consent, even within the statutory

period, solely on the basis of the so called "best interests" of the child.

The relevant portions of Section 115b at issue herein whose constitutional validity is being challenged follow:

> (a) A parent may revoke his consent to adoption only by giving notice, in writing, of such revocation, no later than forty-five days after the execution of the consent to the court in which the adoption proceeding has been or is to be commenced.
>
> ***
>
> (b) If, within forty-five days of the execution of the consent, the court has received such notice of revocation, the court shall promptly notify the adoptive parents and their attorney by certified mail, of the receipt by the court of such notice of revocation.
>
> ***
>
> (ii) Such notice to the adoptive parents shall further set forth that if, within fifteen days from the date of such notice, the court shall receive from the adoptive parents notice, in writing, of their intention to oppose such revocation by the parents, the court will, upon notice to the parents, the adoptive parents and their respective attorneys, proceed, as provided in paragraph (d) of this subdivision, to a determination of whether such notice of revocation by the parents shall be given force and effect and to a determination of what disposition shall be made of the custody of the child.
>
> ***
>
> (d) If, pursuant to the provisions of paragraph (b) of this subdivision, the adoptive parents give timely and proper notice of their intention to oppose the revocation of the parents consent:
>
> ***
>
> (ii) The court shall, upon the date specified, take proof as to whether the best interests of the child will be served by returning custody of the child to the parents, or by the adoption of the child by the adoptive parents, or by placement of the child with an authorized agency for

foster care with or without authority to consent to the adoption of the child, or by other disposition of the custody of the child.

(iii) If the court determines that the best interests of the child will be served by returning custody of the child to the parent or by placement of the child with an authorized agency or by disposition other than adoption by the adoptive parents, the revocation of consent shall be given force and effect and the court shall make such disposition of the custody of the child as will best serve the interests of the child.

(iv) If the court determines that the best interests of the child will be served by adoption of the child by the adoptive parents, the court shall enter an order denying any force or effect to the notice of revocation of consent and shall dispose of the custody of the child as if no such notice of revocation had been given by the parent.

(v) In such proceeding the parent or parents who consented to such adoption shall have no right to the custody of the child superior to that of the adoptive parents, notwithstanding that the parent or parents who consented to the adoption are fit, competent and able to duly maintain, support and educate the child. The custody of such child shall be awarded solely on the basis of the best interests of the child, and there shall be no presumption that such interest will be promoted by any particular custodial disposition.

The Family Court, after trial, voided the consent on the basis of duress in a decision stressing a number of factors included among which was the conduct of the attorney. The child was ordered returned. Because this was the basis of the decision, no consideration of "best interests" was triggered nor did any take place.

Upon appeal to the Appellate Division, this order was reversed and the matter remanded to the trial court for a hearing addressed solely to the best interests of the child. The conduct of the attorney, so crucial to the trial court, was dismissed by the Appellate Division with a perfunctory statement that "we

reject the Family Court's conclusion that the legal services rendered to Nicole were 'patently inadequate' . . ." The Appellate Division thus held the extra-judicial adoption consent to be valid from its inception thereby triggering a "best interests" hearing under the statutory scheme. [Domestic Relations Law Section 115b(d)(ii)].

Upon remand to the trial court petitioner, now faced for the first time with the "best interests" hearing, contended that any requirement that a natural mother be put to the onus of prevailing at a "best interests" hearing, whether imposed by statute or *stare decisis,* is an unconstitutional deprivation of her right to her own child. She accordingly refused to participate in this proceeding.[1] The trial court then granted the underlying adoption. A final judgment was entered in the trial court on May 2, 1989.

Petitioner sought leave to appeal to the New York Court of Appeals from the order of the Appellate Division and on a direct appeal from the Family Court judgment entered upon remand from the Appellate Division. Leave was denied by order dated June 15, 1989. This petition for certiorari is being filed within 90 days from the date of the order of the New York Court of Appeals.

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1. The official transcript of proceedings reads in part (Page 3):
"MR. BIRCH: Judge, at this time (we) respectfully state to the court that the section under which we are designated to appear here is being tested *** we feel that the statute itself, 115b, is unconstitutional by taking away from the natural mother *** rights (under) Due Process (because) the Appellate Division remanding this matter to the hearing court for a best interests hearing, and, as a result of that, the natural mother respectfully declines to take part in any best interests hearing.***"

POINT ONE

THE CONFLICT OF INTEREST ON THE PART OF PETITIONER'S ATTORNEY WAS AN *IPSO FACTO* DEPRIVATION OF DUE PROCESS UNDER THE 14TH AMENDMENT WHICH TAINTED ALL SUBSEQUENT PROCEEDINGS.

The American Bar Association (informal opinion 87-1523, dated February 14, 1987) has recognized that

> "a lawyer may not ethically represent both the adoptive and biological parents in a private adoption proceeding."

Further,

> "The inherent conflicts cannot be reconciled. Thus, the lawyer seeking to represent both the adoptive and biological parents in a private adoption proceeding cannot have a reasonable belief that the representation of one client would not adversely affect the relationship with or representation of the other client. See Rule 1.7. The same result would obtain under DR 5-105(C) of the predecessor Model Code.
>
> ***
>
> The reasons stated herein why the lawyer cannot represent both parties *are equally applicable to the lawyer's acting as an intermediary.* See Rule 2.2. (emphasis added).

At the very least, petitioner's attorney by paying the hospital bill and picking up the baby on behalf of the adoptive parents waiting in his office, was impermissably acting as an intermediary. The basic immorality of what was ultimately perpetrated upon Nicole Laurence is further underscored by the role of her own doctor who, not only steered her to the attorney ultimately to become involved in this manner, but also steered his nurse's sister and brother-in-law (the adoptive parents) to the baby.

The presence of a conflict of interest on the part of counsel is a violation of constitutionally insured due process of law. (*Wood v. Georgia,* 450 U.S. 261).

Petitioner was denied due process of law by the refusal of the New York courts other than the *nisi prius* court, to recognize and give effect to the constitutional magnitude of her being "represented" by an attorney acting on behalf of, at least to the extent attributed to him by the Code of Professional Responsibility, interests which were in conflict.

For this reason alone, to underscore the enormity of the constitutional implications surrounding an attorney's conflict of interest in this most sensitive area, this petition should be granted. The issue is of sufficient general interest and importance to warrant this Court's attention. (cf. *In re Woods,* 143 U.S. 202, *Petition of Lau Ow Ben,* 141 U.S. 583) "Grey market" adoptions which take place under conditions of desperation stemming from the most fundamental human emotions too often push the best of people into acts they would never dream of perpetrating under ordinary circumstances. When this is done, even out of the most noble motives, someone must be hurt. That "someone" is always the birth mother who has faced the hostility and disapproval of middle-class society and in too many cases, is too frightened to face a court in efforts to retrieve her child.[2] The resultant impact upon *nisi prius* courts thus becomes articulated in terms of the court itself assuming the burden of investigating the legitimacy of questionable procedures, too often knowing that something has transpired beneath the surface which is virtually impossible to flush out within the parameters of an ordinary adoption proceeding. This sense of malaise, most often centering on the role of the intermediary-attorney,

2. A poll conducted by People Searching News indicated that 99% of the responding birth-mothers were still searching, after many years, for their children. Of these women, 97% signed "voluntary" surrenders characterized by: duress (84%); "given no choice" (32%); surrender while under heavy sedation (20%); told baby was dead and surrender a formality (1%). 47% of birth-mothers residing in maternity homes were told to use false names with other residents.

has even prompted trial judges to seek the organized input of their collective colleagues in formulating methods to deal with it. (cf. *Matter of Calynn M.G.*, 137 Misc. 2d 1005). A clear signal from this Court concerning the Due Process implications of the conduct of attorneys in this realm will do much to stimulate the respective states to formulate their response to such situations.

POINT TWO

THE NEW YORK DOMESTIC RELATIONS LAW WHICH REQUIRES THAT A NATURAL MOTHER PREVAIL AT A "BEST INTERESTS" HEARING AS A CONDITION PRECEDENT TO RETURN OF HER BABY UNCONSTITUTIONALLY DEPRIVES ALL NATURAL MOTHERS, APPELLANT INCLUDED, OF THE CONSTITUTIONALLY PROTECTED RIGHT OF A MOTHER TO KEEP AND RAISE HER OWN CHILD.

Lehr v. Robertson, 463 U.S. 248, decided within the framework of the Due Process Clause of the Fourteenth Amendment, conceptualized the legal thresholds foundational to recognition of a natural mother's right to her child. When the Fourteenth Amendment provides that no state shall deprive any person of life, liberty or property without due process of law, and that Clause is invoked in a novel context, the practice of this court has been to commence its inquiry with a determination of the precise nature of the private interest that is threatened by the State. Only after that interest has been identified, can the adequacy of the State's process be evaluated.

The "liberty" interest of parents to control their children's destiny was vindicated in *Meyer v. Nebraska,* 262 U.S. 390 and *Pierce v. Society of Sisters,* 268 U.S. 510. This "liberty" interest is defined by effecting a balance between the rights of the child corresponding to a particular parental duty running in his favor, and parental rights.

In *Prince v. Massachusetts,* 321 U.S. 158, 166, the Court declared it a cardinal principal that

"the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."

These rights arising out of the usual family unit cannot be terminated unless the procedures enacted by the State meet the requisites of the Due Process Clause (*Santosky v. Kramer,* 455 U.S. 745).

The rights of natural parents to children born out of wedlock have likewise been recognized (*Stanley v. Illinois,* 405 U.S. 645, *Quilloin v. Walcott,* 434 U.S. 246, (*Caban v. Mohammed,* 441 U.S. 380).

While the rights of natural fathers have been delineated by decisions which, in effect, establish a *de facto* correlation between parental responsibility assumed and/or interest shown in the child on the one hand,and the giving effect to their rights as natural parents in individual circumstances defined by the facts of a particular case on the other, (cf. *Caban v. Mohammed, supra, Stanley v. Illinois, supra. Quilloin v. Walcott, supra, Lehr v. Robertson, supra)* the relationship of a natural mother to her child has never been on this tenuous footing. Indeed, in *Caban v. Mohammed, supra* (397) this Court stated

"The mother carries and bears the child, and in this sense her parental relationship is clear."

Thus, the overwhelming "liberty" interest of a mother in raising her child and the corresponding right of the child to be raised by his/her biological mother cannot be diluted by any distinction between parents who bear children while married or out of wedlock. As observed in *Lassiter v. Department of Social Services,* 452 U.S. 18, 27:

"This Court's decisions have by now made plain beyond the need for multiple citation that a parent's desire for and right to the 'companionship, care, custody, and management of his or her children' is an important interest that 'undeniably warrants deference and absent a powerful countervailing interest, protection *** Here the State has sought not simply to infringe upon that interest, but to end

it. If the State prevails, it will have worked a unique kind of deprivation. (Citations omitted) A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore a commanding one."

Lassiter further pointed out that it was "not disputed that State intervention to terminate the relationship between (a parent) and (the) child must be accomplished by procedures meeting the requirements of the Due Process Clause" (at page 37).

In *Santosky v. Kramer, supra* (753, 754) this Court stated that:

"The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State ***. If anything, parents faced with forced dissolution of their parental rights have a more critical need for procedural protection than do those resisting State intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parent with fundamentally fair procedures."

It was further pointed out in *Santosky, supra* (755) that:

"minimum requirements (of procedural due process) being a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the pre-conditions to adverse official action." *Vitek v. Jones,* 445 U.S. 480, 491, 100 S.Ct. 1254, 1262, 63 L.Ed. 2d 552)"

Matthews v. Eldridge, 424 U.S. 319, formulated three factors to be weighed in deciding whether or not the hearing provided when a State seeks to deprive an individual of a constitutionally protected "liberty" interest passes constitutional muster: First, the private interest that will be affected by the official action; Second, the risk of an erroneous deprivation of such interest through the procedures used and the probable

value, if any, of additional or substitute procedural safeguards; Third, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. In balancing these factors, this Court stated in *Santosky v. Kramer, supra,* (763):

> "because parents subject to termination proceedings are often poor, uneducated or members of minority groups, *** such proceedings are often vulnerable to judgment based on cultural or class bias."

and concluded, in connection with proceedings to terminate parental rights, that a heavy burden must be overcome to sever the fundamental liberty interest of a natural parent in her child and the concomitant interest of a child in being raised by his/her natural parent. This burden can only be sustained by a clear and convincing evidentiary standard.

> "The Court's theory assumes that termination of the natural parent's rights invariably will benefit the child. Yet we have noted above that the parent and the child share an interest in avoiding erroneous termination. Even accepting the Court's assumption, we cannot agree with its conclusion that a preponderance standard fairly distributes the risk of error between parent and child. Use of that standard reflects the judgment that society is merely neutral between erroneous termination of parental rights and erroneous failure to terminate those rights. (Citations omitted) For the child, the likely consequence of an erroneous failure to terminate is preservation of an uneasy status quo. For the natural parents, however, the consequence of an erroneous termination is the unnecessary destruction of their natural family. A standard that allocates the risk of error merely equally between those two outcomes does not reflect properly the relative severity." (*Santosky, supra* 765, 766).

The State has an urgent interest in the welfare of the child. It shares the parent's interest in an accurate and just decision at the fact finding proceeding (*Lassiter v. Department of Social Services, supra*). Clearly, applying these principles to the case at

bar, were the State's procedures to insure Due Process to allocate the risk of error equally between litigants—paraphrased: were it to merely insist that a birth-mother and adoptive parents come before the court on an equal footing, this itself, standing alone, would be constitutionally offensive to the holding in *Santosky* which allocates a heavier burden to the party seeking to divest a mother of her parental rights.

But the State of New York goes even further and for less cause. First, it places the intolerable burden upon a birth-mother of prevailing at a "best interests" hearing which, as shall be demonstrated, she cannot possibly win. Second, it puts her on an even lower footing than abusive, neglectful and/or unfit parents.

This case is even more compelling than *Santosky*. In *Santosky*, the Court considered termination of parental rights for permanent neglect, abandonment and a constellation of other overriding factors which ordinarily would leave a child's future in limbo failing State intervention. These factors are noticeably lacking here. In this case, a natural mother signed a consent—no more, no less. She was entitled to a maximum of forty-five days within which to revoke that consent. She did so within ten days. What overriding interest can the State have in "finalizing" the status of a child less than ten days old in a home away from its birth mother? What instance of brutal child abuse or neglect is involved such as would justify the State's intervention?

New York State seeks here to intervene and sever the relationship of mother and child based upon the simple naked act of a natural mother signing an adoption consent in a hospital room while "represented" by a lawyer whose interests are at best questionable. At the time petitioner sought to revoke her consent, the adoptive parents had custody of her infant for a period of less than ten days. Even assuming *arguendo* that she had taken the full 45 day statutory period before revoking her consent, no significant ties between adoptive parents and child could possibly have arisen in this time as might justify depriving the child of the society and care of its natural mother. Nor can any "equity" in the child be said to arise in favor of adoptive parents in this or any standard adoption scenario by virtue of

the child residing with persons whose "rights," if any, are solely a creature of statute.

The State, in enacting Section 115b, gives vent to concern about the "terror"[3] of adoptive parents that a natural mother will claim her child. How much "terror" can exist in a *de minimus* period of ten days during which these adoptive parents had the child? (Or in terms of the statutory maximum, in the 45 days which the statute gives a natural mother to revoke her consent)? How much "terror" must exist as a threshold sufficient to deprive the child of its right to be reared by its natural mother; and, more important to this appeal, to destroy the strong fundamental "liberty" interest of the mother in her child? We respectfully submit that the State itself has delineated a maximum period of 45 days which is certainly a sufficient safeguard to the interests, if any, of adoptive parents. When the State enacts an additional requirement to the effect that a birth mother prevail at a "best interests" hearing, it has in effect destroyed the birth mother's right to her child by placing in her way a burden impossible for her to sustain.

The State of New York, recognizing the right of a child to be reared by its natural mother as it existed prior to the enactment of Section 115b in 1972 held, as a matter of unchallenged *stare decisis*, in accord with the holdings of this Court, that the best interests of a child overwhelmingly dictate that it be raised by its natural mother (*Scarpetta v.Spence-Chapin Adoption Service*, 28 N.Y. 2nd 185, *Kropps v. Shepsky*, 305 N.Y. 465, *People ex rel. Claudia "PP" v. Sackey*, 40 A.D. 2d 130; *Matter of Anonymous*, 33 N.Y. 2d 541).

In *Kropps v. Shepsky, supra*, the New York Court of Appeals, holding that apart from statutory abandonment, cruelty toward the child, or other overriding concern,

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3. The legislative intent of Section 115b as set forth in *Matter of Sarah K.*, 66 N.Y. 2d 223, 234, Cert. denied 475 U.S. 1108, was to remedy a situation which purportedly struck ". . . terror in the hearts of prospective adoptive parents.".

> "*** the primacy of parental rights may not be ignored. In no case may a contest between parent and non-parent resolve itself into 'a simple factual issue as to which (affords) the better surroundings, or to which party is better equipped to raise the child' (citation omitted) And that is true even if the non-parent initially acquired custody of the child with the parent's consent (citations omitted)."

It may well be asked how this fundamental truth so often repeated by the courts of New York suddenly loses validity by operation of a statute which seeks to relieve prospective adoptive parents of "terror?" What relevance does the claimed interest of the State in safeguarding the integrity of the statutory adoption procedure bear to the step taken to effectuate it, i.e. a change in the established *stare decisis* holding the best interests of a child to be best served by being reared by his natural parent? Paraphrased: how is the legislative purpose furthered by destroying the respective "liberty" interests of natural mother and child in each other?

Were the State of New York to have limited its enactment to delineating a finite period of time within which a birth-mother may revoke her consent, such legislative act would have been directly responsive to the enunciated legislative goal. But the statute goes further.

The State of New York, in the guise of giving a natural mother the right to a hearing, in effect unconstitutionally creates a scenario within which her rights can be neither acknowledged nor given effect. The legislative purpose claims to encompass the entire adoptive process. In fact, however, when that very process makes no place for the rights of the natural mother to be vindicated, we respectfully submit that it is reduced, in effect, to a legalized mechanism for supplying adoptable babies for a market whose supply had substantially dwindled following liberalization of social and legal responses to abortion.

Statistics mandate certain irresistable conclusions. In *Adoption Without Agencies: A Study of Independent Adoptions*, (Meezan, Katz and Russo, New York Child Welfare League of America, Inc., 1978), statistical profiles both of sur-

rendering biological mothers and adopting parents were fomulated:

—Of those surrendering biological mothers interviewed who had no contact with adoption agencies (i.e. private adoptions), forty percent were under eighteen; an additional twenty-nine percent between eighteen and twenty-one; a further sixteen percent between twenty-one and twenty-four. A total of eighty-five percent of surrendering birth-mothers were thus under the age of twenty four.

—With reference to adoption agency clientele, viz., natural mothers who sought guidance from adoption agencies, the figures were even more telling. Forty-five percent of surrendering natural mothers were under eighteen; an additional thirty-one percent between eighteen and twenty-one; a further eighteen percent between twenty-one and twenty-four. The total percentage of surrendering natural mothers under 24 in this category was ninety-four percent.

—Fewer than two-thirds of the respondents had finished high school; only four had completed college.

—Only nine percent of the biological mothers were married.

—Almost two-thirds lived with either their parents or relatives during their pregnancies, or were otherwise undomiciled.

Statistics with reference to adoptive couples are equally revealing:

—Over sixty percent of the men and half the women graduated from college, while only five percent did not finish high school.

—Seventy-five percent of the men were employed in either professional or managerial positions, with an additional nine percent employed in sales occupations.

—With few exceptions, adoptive parents lived in private homes, with the overwhelming majority (89%) in the process of buying or having already bought their own homes.

—Only ten percent rented their living accommodations.

—All but three of the adoptive families were two-parent households.

—The marriages in question had lasted a fairly long time, with only thirteen percent married less than six years, and sixty-four percent married more than ten years.

—As expected, the families tended to be small. About half had only one child in the household.

—Eighteen percent of the families had biological as well as adopted children. About one third had adopted previously, nearly half of these through agencies.

—More than eighty percent of the couples[4] had family earnings of over $15,000 (inflation-adjusted figure $27,194) and almost half had earnings of over $25,000 (inflation-adjusted figure $47,284).

Petitioner who was seventeen, unmarried, and living with her parents, fits the statistical portrait of surrendering birthmothers. Correspondingly, the adoptive family also fits its own statistical portrait.

The State of New York in granting a surrendering natural mother who seeks to revoke her consent a "best interests" hearing has simply established an illusory "right" which is worthless. Painstaking research into the officially reported cases in the State of New York on all levels (Court of Appeals, intermediate appellate courts, and trial courts of original jurisdiction), fails to indicate a single instance subsequent to the effective date of Section 115b (1972) in which a natural mother has prevailed at a "best interests" hearing. This figure becomes even more significant in light of the fact that official figures verify that more than 7000 adoptions are processed in New York State every year. (cf. *Matter of Sarah K.*, 66 NY 2d 223, 237, citing statistics of N.Y. Office of Court Administration). Out of the projected 119,000 adoptions between 1972 and the present, (assuming the 7000 figure to have remained constant over the 17 years since enactment of the statute), not a single reported case has been found where, with no other factors present, a natural

4. Figures cited in the report for 1978 have been quoted verbatim; adjusted figures based on annual Consumer Price Index through 1988 are in parentheses.

mother has ever prevailed in a "best interests" hearing.[5] And this graphic figure only confirms what logic would dictate, that no natural mother fitting this statistical portrait can possibly prevail over an adoptive family[6] equipped to give a child the obligatory room of his/her own, toys galore, mature parents starved for a child to love, a home abounding in culture, and the affluence to provide private schools and all other indicia of upper-middle class comfort.

An irresistible conclusion is thus mandated. The grant of the statutory hearing to a natural mother seeking to revoke her out-of-court adoption consent is an illusory "right." The statute effectively divests her of the right to mother her own child not because of serious abuse or neglect, nor for abandonment or permanent neglect, but by virtue of the simple naked act of signing a paper which, once executed, can, in effect, never be called back.

If, by this naked act the law looks to her as having waived her constitutional "liberty" right, then the State has not fulfilled its obligation to endulge every reasonable presumption against waiver nor to avoid presuming acquiescence in the loss of a fundamental right (cf. *Fuentes v. Shevin,* 407 U.S. 67). The very fact that the "best interests" hearing is illusory—that it creates the aura of a real right in the eyes of a birth mother prior to the rude awakening that she has been assigned an impossible burden—*ipso facto* points to the fact that this waiver could not possibly be an informed one. It is respectfully submitted that this unconstitutional deprivation must be set aside.

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5. No figures are available from the Office of Court Administration with reference to number of "best interests" hearings actually held, the results of which may not have been officially reported.

6. Excluding, of course, cases decided under Subdivision 7 which have no applicability here.

CONCLUSION

The judgment of the court below should be reversed. Petitioner prays that certiorari be granted.

Respectfully submitted,

STANLEY GARTENSTEIN
Attorney for Petitioner
299 Broadway
New York, NY 10007
(212) 619-2457

APPENDIX A—ORDER OF NEW YORK COURT OF APPEALS DENYING LEAVE TO APPEAL DATED JUNE 15, 1989

State of New York
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the fifteenth day of June A.D. 1989

PRESENT, HON. SOL WACHTLER, *Chief Judge, presiding.*

2-13 Mo. No. 687
In the Matter of Baby Boy L. (Anonymous).

Mr. & Mrs. (Anonymous),
Respondents,

Nicole L. (Anonymous),
Appellant.

A motion for leave to appeal to the Court of Appeals and for a stay in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion for leave to appeal be and the same hereby is denied; and it is

ORDERED, that the said motion for a stay be and the same hereby is dismissed as academic.

s/ Dominic M. Sheraw

Donald M. Sheraw
Clerk of the Court

APPENDIX B—OPINION AND ORDER OF APPELLATE DIVISION, SECOND DEPARTMENT DATED NOVEMBER 28, 1988

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

3725j
Z/hu

__AD2d__ Argued—October 31, 1988

MILTON MOLLEN, P.J.
WILLIAM C. THOMPSON
RICHARD A. BROWN
GERALDINE T. EIBER, JJ.

3872E

In the Matter of Baby Boy L. (Anonymous). Mr. & Mrs. Anonymous, appellants; Nicole L. (Anonymous), respondent.

DECISION & ORDER

Frederick J. Magovern, New York, N.Y., for appellants.

Mitchell P. Newman, Staten Island, N.Y., for respondent.

In an adoption proceeding, the appeal is from an order of the Family Court, Richmond County (Meyer, J.), dated July 1, 1988, which, *inter alia,* after a hearing, granted the natural mother's application to set aside her extrajudicial consent to adoption and denied the petition for adoption.

ORDERED that the order is reversed, on the law and the facts, without costs or disbursements, the application to revoke consent to adoption is denied, and the matter is remitted to the Family Court, Richmond County, for a best interests hearing on the petition for adoption, before a different Judge.

On January 12, 1988, the natural mother Nicole L., a 17-year-old high school student, gave birth, out of wedlock, to the child who is the subject of this proceeding. Two days subse-

quent to the birth, Nicole executed consent forms to surrender the child for adoption. Approximately 10 days thereafter, Nicole sought to revoke her consent, claiming that she was under duress when she executed the forms. Following a hearing, the Family Court granted Nicole's application to vacate her extrajudicial consent to the adoption. In so ruling, the court found, *inter alia,* that the documents which provided for the surrender of the child were executed under duress and that the "pressures upon Nicole seriously interfered with [her] judgment and ability to make an independent, knowing and voluntary consent to adoption."

The prospective adoptive parents, who have had custody of the infant since his birth, opposed the natural mother's efforts to vacate her consent to the adoption. They contend on appeal that the Family Court's findings were against the weight of the credible evidence and that the matter should be remitted to the Family Court, Richmond County, so that a hearing may be conducted to determine the best interests of the child pursuant to Domestic Relations Law §115-b. We find merit to this contention and, therefore, reverse the order appealed from.

In *Matter of Sarah K.* (66 NY2d 223, 233) the Court of Appeals recognized that "[a] parent's consent to the release of a child for adoption has consequence in the law, and cannot invariably be undone at will."

It has also been recognized, in this regard, that suggestions, persuasion, arguments or entreaties in favor of adoption do not constitute the "kind of force" which would sustain a finding of duress and thereby warrant the vacatur of a natural parent's consent to an adoption (*see, Matter of Podmore v. Our Lady of Victory Infant Home,* 82 AD2d 48, 51). Thus, parental threats (*Batt v. Nebraska Children's Home Socy.,* 185 Neb 124, 174 NW2d 88), pressure by the surrendering mother's family (*People ex rel. Drury v. Catholic Home Bur.,* 34 111 2d 84, 213 NE2d 507), advice by the surrendering parent's physician and mother (*Matter of Adoption of Giambrone,* 262 So 2d 566 [La App]), and emotional distress or depression (*Anonymous v. Anonymous,* 23 Ariz App 50, 530 P2d 896; *Matter of Simaner,* 16 Ill App 2d 48, 147 NE2d 419, *affd* 15 Ill 2d 568, 155 NE2d 555; *Matter of Surrender of Minor Children,* 344 Mass 230, 181

NE2d 836) have all been cited as insufficient to overturn a consent to the surrender of a child for adoption (*see, Matter of Podmore v Our Lady of Victory Infant Home, supra*).

With reference to the facts at bar, it is clear from the record that Nicole had misgivings about consenting to the adoption and that Nicole's mother was a primary impetus in Nicole's decision to execute the consent forms. However, although Nicole may have experienced maternal pressure to place the child up for adoption, that fact did not necessarily render the circumstances surrounding the execution of the consent coercive nor did the entreaties of her mother impair Nicole's ability to exercise free will (*see, Matter of Commssioner of Social Servs., Suffolk County v. Sandra G.*, __ AD2d __ [2d Dept., June 27, 1988]). Instead, it appears that Nicole was confronted by an emotionally difficult choice and that she elected to defer to the judgment of her mother (*see, Matter of E. W.C.*, 89 Misc 2d 64).

A finding of duress is further belied by evidence in the record to the effect that Nicole was specifically advised of the options available to her, one of which included keeping the baby; by Nicole's testimony that her father supported her and never exerted any pressure upon her; and by testimony that Nicole personally contacted the mother of the putative father, who indicated a willingness to take in, care for, and support the infant as well as provide a home for the natural mother. Nicole, however, rejected this option. Her decision to proceed with the adoption, was, instead, reflective of her express desire to remain with her parents, for she was advised by her mother that she could not reside in her parent's home if she elected to keep the baby. While we are cognizant of the fact that Nicole may regret her choice, we cannot say, on this record, that the execution of the instruments surrendering the child for adoption was other than voluntary. The following quote, which is directly applicable to the facts of this case, bears reiteration:

> " 'Contemplation of the surrender of one's own child is in many, if not all, cases a cause of emotional and mental stress *** No statute has said that surrenders are valid only if executed free from emotion, tensions, and pressures caused by the situation. No principle of law requires the

rule. A balance of the interests of the persons concerned and of society weighs strongly against it' " (*see, Matter of T.W.C.*, NYLJ, Dec. 18, 1974, at 17, col 6, *aff* 48 AD2d 893, *affd* 38 NY2d 128, quoting from *Matter of Surrender of Minor Children*, 344 Mass 230, 181 NE2d 836, 839, *supra*).

We also find merit in the appellants' contention that the Family Court erred in vitiating Nicole's consent to the adoption on the ground that she did not fully understand the significance of the forms which she was signing. As the Court of Appeals noted in *Matter of Sarah K. (supra,* at 241) "neither emotional distress nor mistake is a ground for vitiating consent under Domestic Relations Law §115-b(4)". Nicole's assertion that she believed she was signing a consent to temporarily place the child in foster care is, in any event, against the weight of the credible evidence. Rather, the record supports the conclusion that Nicole was well aware of the nature of the documents which she signed (*see, Matter of "Female" D.*, 83 AD2d 933). The record discloses that the mechanics of the adoption process were explained to Nicole, that she understood the differences between temporary foster care placement and adoption, and that she read the first page of the extrajudicial consent form and knew it referred to adoption. Significantly, none of the forms which Nicole signed even mention foster case. In addition thereto, we note that Nicole's claim of duress is entirely inconsisent with her assertion that she willingly signed the forms because she thought they constituted a consent for temporary foster case placement (*see, Matter of Female D., supra*).

Finally, we reject the Family Court's conclusion that the legal services rendered to Nicole were "patently inadequate" leaving her "without any real ability to effectively exercise her free, independent and voluntary will with respect to the surrender of her child."

In view of the foregoing, the order appealed from is reversed and the matter is remitted to the Family Court, Richmond County, so that a hearing pursuant to Domestic Relations Law §115-b may be conducted to determine the best interests of the child.

MOLLEN, P.J., THOMPSON, BROWN and EIBER, JJ., concur.

ENTER:
Martin H. Brownstein
Clerk

APPENDIX C—OPINION AND ORDER OF FAMILY COURT, RICHMOND COUNTY DATED JULY 1, 1988

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

In the Matter of the Adoption of
BABY BOY L

Docket No. A-336/88
DECISION AND ORDER

Appearances:
Attorney for Adoptive Parents:
FREDERICK J. MAGOVERN, ESQ.
120 Broadway
Suite 1740
New York, N.Y. 10271
Attorney for Natural Mother:
MITCHELL NEWMAN, ESQ.
637 North Railroad Avenue
Staten Island, N.Y. 10304
Law Guardian for Child:
JAMES K. O'HALLORAN, ESQ.
350 St. Marks Place
Staten Island, N.Y. 10301

MEYER, J.:

This is a contested private placement adoption proceeding wherein the respondent-natural mother seeks to have her extra-judicial consent declared a nullity upon the grounds of fraud, duress and coercion. The Court is presented with the question of the validity of the natural mother's extrajudicial consent to adoption of her out-of-wedlock child born on January 14, 1988 in West Islip, Suffolk County, New York.

The Court finds the facts as follows. At the time of her pregnancy in approximately May, 1987, the natural mother,

Nicole, was a seventeen-year-old high school student residing with her parents. They were not informed of her condition until September 1987, about five months into her pregnancy. Prior thereto, Nicole had informed the natural father of her pregnancy. He offered her no assistance of any substantial nature. The mother of the natural father offered to care for the child, but Nicole refused this offer because she wished to have the baby live with her in her parents' home. Nicole purchased clothing and other items for the expected child, but took no further action to prepare for the child prior to advising her parents of her pregnancy.

Upon learning of Nicole's pregnancy, her parents, who are devout Roman Catholics, were deeply shocked. After taking a previously planned short trip to visit relatives in St. Martin, West Indies, Nicole's parents arranged for her to be examined by a physician, Dr. Pellitieri, who was known and trusted by the parents. Dr. Pellitieri had previously delivered three of Mrs. Laurence's children.

At the first meeting and at several subsequent meetings, Dr. Pellitieri strongly urged that Nicole's child be placed for adoption so that Nicole would not suffer the stigma and consequences of being a teen-aged, unwed mother. He also referred the family to a lawyer, John T. DiPalma, Esq., in order to arrange for the suggested adoption with which plan Nicole's parents were in agreement. Dr. Pellitieri was a neighbor of Mr. DiPalma and had made several prior adoption referrals to him. Also Dr. Pellitieri was familiar with and had employed Adele Romano, a sonogram specialist. She advised him that her sister and brother-in-law were anxious to adopt a child and they are the petitioners in this case who seek to adopt the child.

Thus, Nicole came to be Dr. Pellitieri's patient and saw Attorney DiPalma solely through the intervention of her parents and not by her own choosing, although she did not openly oppose her parents in this connection. Neither Nicole nor her parents paid Mr. DiPalma for his services. According to Mr. DiPalma's Office of Court Administration affidavit, he was paid exclusively by the adoptive parents.

Except on two occasions prior to Nicole's signing the consent documents, Attorney DiPalma communicated exclusively

with her mother and/or father regarding the adoption. The first occasion was an initial conference with Nicole and her parents in early October 1987, at which meeting general adoption procedure and alternatives were discussed but no consent forms reviewed or given to Nicole or her parents. The evidence is clear that Nicole's participation at this meeting was minimal and that Mr. DiPalma conferred almost exclusively with Nicole's mother, who he described as "overzealous" and "engineering" the decisions with respect to the future of her daughter and her expected child.

The second time that Nicole saw Mr. DiPalma was after the birth of her child in her hospital room on the day of her discharge. It was then that Nicole for the first time saw the purported consent documents. These papers were neither read by her or her parents nor read to her or to her parents in full. Rather, Mr. DiPalma "critiqued" the documents whereupon Nicole executed them before leaving the hospital. The Court finds that, after signing the documents, Nicole and her parents left the hospital without understanding that an application to a court would be necessary to enable Nicole to recover her child in the event she wished to do so within 45 days of the signing of the forms. Rather they believed that a court appearance would be necessary to "finalize" Nicole's consent. It is clear that any efforts of Mr. DiPalma to represent Nicole were grossly inadequate, particularly in view of Nicole's young age and the very heavy parental pressure put on her. Indeed, from beginning to end, Mr. DiPalma's conversations were almost exclusively with Nicole's mother. Nicole's communications with Mr. DiPalma were minimal and provided no real opportunity for informed discussion of her wishes and choices. The offer of the natural father's mother to be a possible resource was not seriously explored by Nicole's parents or Mr. DiPalma. In view of the foregoing, it is clear that Mr. DiPalma did not represent Nicole in any genuinely professional manner. Certainly he does not represent her in these proceedings.

The Court in *Matter of Sara K.*, 66 N.Y.2d 223, cert. denied 106 S.Ct. 1515, held that neither emotional distress nor mistake are grounds for vitiating a consent to adoption and that it would be insufficient to show that the natural parent was

simply mistaken as to the meaning of the consent forms. In this case (even assuming that Nicole had read and understood the documents or that they had been fully explained to her) the forms, unlike those in *Sara K., supra,* are defective on their face. They contain serious mistakes and are confusing.[1]

The Court in *Sara K.* emphasizes that "[a] parent's consent to the release of a child for adoption has consequence in the law, and cannot invariably be undone at will." But in that case the Court was faced with a very different factual situation than

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1. Respondent's Exhibit A herein, entitled *EXTRAJUDICIAL CONSENT* (Natural Parent-Private-Placement), does not comply with the requirements of Domestic Relations Law (DRL) Sec. 15-b(4)(a) which states: "In any case where a consent is not executed or acknowledged before a judge or surrogate pursuant to subdivision two of this section, the consent shall state in conspicuous type of at least eighteen point type: (i) the name and address of the court in which the adoption proceeding has been or is to be commenced . . ." DRL Section 115(2) states with regard to venue: "The proceeding shall be instituted in the county where the adoptive parents reside or, i such adoptive parents do not reside in this state, the county where the adoptive child resides." Respondent's Exhibit A is captioned "County of Suffolk", not County of Richmond which is the residence of the proposed adoptive couple. Also, in the space provided for the name and address of the proper court, the form states: "FAMILY COURT OF THE STATE OF NEW YORK, COUNTY OF SUFFOLK, Veterans Memorial Highway, Hauppauge, New York and FAMILY COURT OF THE STATE OF NEW YORK, COUNTY OF RICHMOND, 100 Richmond Terrace, Staten Island, NY 10301". This error creates obvious confusion and is clearly misleading. The form itself indicates that "the Domestic Relations Law 115-b provides that the consent shall state the name and address of the court in which the adoption proceeding has been or is to be commenced." Respondent's Exhibit J, is entitled *EXTRAJUDICIAL CONSENT* (Natural Parent-Private-Placement). Once again the venue is improper, as in Respondent's Exhibit A. Also there is no explanation for the need for *two* extrajudicial consents which can only add to the confusion. Furthermore, the title of the form leaves blank the sex of the child. It appears as "BABY____ LAURENCE", and fails to designate whether the child is either Nicole's daughter or son. Also, this form is not properly dated and states incorrectly that the name and address of the court in which the adoption proceeding has been or is to be commenced is FAMILY COURT OF THE STATE OF NEW YORK, COUNTY OF SUFFOLK, Veterans Memorial Highway, Hauppauge, New York and FAMILY COURT OF THE STATE OF NEW YORK, COUNTY OF RICHMOND, 60 Lafayette St., NYC, NY, the latter address being incorrect.

in the case at bar. Here Nicole's subjective confusion also arose from misunderstandings and incomplete information supplied by those who took on the responsibility of informing and explaining to Nicole, a seventeen-year-old girl, the legal significance of the forms she was signing. But Nicole and her parents were so inadequately informed by Mr. DiPalma as to be misled. (See *Sarah K.* at p. 241). Certainly Nicole did not sign the forms under circumstances which convince this Court that her consent was knowingly and freely given.[2]

Unlike this case, *Sara K., supra,* involved a natural father who was himself an attorney and who had the forms at home for two weeks before signing them. "Respondents held the consent forms for two weeks before signing them, then remained steadfast in their decision for three months thereafter, knowing the child was meanwhile making a life with appellants, as her prospective adopted parents.", *Sarah K.,* at p. 241.

The record in this case reveals that there were enormous emotional, psychological and cultural pressures brought to bear on Nicole by her family to surrender her child. These pressures were initiated and later reinforced by Dr. Pellitieri. Considered together with the patently inadequate serices provided to Nicole by Attorney DiPalma, she was left without any real ability to effectively exercise her free, independent and voluntary will with respect to the surrender of her child.[3]

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2. See *Matter of Burnadette L.C., an infant,* 115 Misc.2d 78: "[E]ven though an infant may sign a paper surrendering his or her child for adoption, this does not obviate the necessity for the surrender to be pursuant to statute, that it not be the product of fraud or duress, and that the surrender flow from a full understanding of its legal consequence." citing *Matter of Anonymous,* 77 Misc.2d 323, affd *sub nom Matter of T.W.C.,* 48 AD2d 893, aff'd 38 NY2d 128; *Matter of Infant S.,* 48 AD2d 425; *Matter of Anonymous,* 60 Misc.2d 854.

3. "New York courts generally treat a natural mother's consent as involuntary, even if deliberate and knowing, if she was subject to special pressures to surrender her baby.", 46 NY Jur.2d §472.

Compounding the normal stresses confronting a young mother without resources, were the seriously defective consent agreements, the questionable referrals made by Dr. Pellitieri, and the grossly inadequate time and attention given her by Attorney DiPalma necessary to familiarize her with the nature and consequences of her signing the documents.

Further adding to Nicole's confusion and stress were the hasty and pressured circumstances which surrounded the execution of the purported consent documents in the hospital.

It was clear to Mr. Di Palma from the first and only meeting that he had at his office that there was serious conflict between Nicole, his seventeen-year-old "client," and her parents. He acknowledged the conflict at that time and recommended counselling in an attempt to help Nicole come to her own decision. She refused and he, nevertheless, proceeded, after only cursory discussion with her, to allow this young mother to sign the forms in the hospital. *Matter of Male Infant D.*, 137 Misc.2d 1016, Fam. Ct., N.Y. Co., citing American Bar Association Standing Committee on Ethics and Professional Responsibility Informal, Opinion 87-1532.

Accordingly, the Court finds that the incomplete and misleading consent documents signed by Nicole were executed under duress by reason of the extreme family pressures upon Nicole and by the conduct of Dr. Pellitieri and Attorney DiPalma.[4] These factors, in addition to the normal emotional stress involved in the surrender of a child, seriously interfered with Nicole's judgment and ability to make an independent, knowing and voluntary consent to adoption.

Therefore, the respondent-natural mother's application is granted. The petition for adoption is denied. The child is to be returned to the natural mother by the petitioners within ten days from the date of this Order.

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4. See *State of New York ex rel Deborah G. v. Doe*, 75 AD2d 810 (2nd Dept. 1980), dismissed in part on other issues 50 NY2d 1042: "The natural mother's consent was tainted by family pressures and, more critically, by the conduct of her attorney. Where counsel undertakes to represent a natural mother, such counsel must be independent and effective."

Notify attorneys.

E N T E R:

s/ M. Holt Meyer

M. HOLT MEYER

Judge of the Family Court

Dated: Staten Island, N.Y.

July 1, 1988

APPENDIX D—FINAL JUDGMENT OF FAMILY COURT, RICHMOND COUNTY DATED MAY 2, 1989

At a term of the Family Court of the State of New York, held in and for the County of Richmond at Staten Island, New York, on May 2, 1989.

PRESENT:
Hon. Carmen J. Cognetta, Jr.,
Judge

In the Matter of BABY BOY L. (Anonymous), MR. and MRS. ANONYMOUS,

Petitioners,

--against-

NICOLE L.,

Respondent.

FINAL JUDGMENT and/or ORDER
Docket No. A-336/88

A Petition for adoption of the subject infant having been filed in this Court alleging that the best interests of the child, BABY BOY L., would be served by his adoption by petitioners and a proceeding to vacate her surrender having been brought by respondent alleging fraud, duress, and mistake by notice of motion dated April 12, 1988, and this Court, after hearing on the merits, having rendered its decision in writing granting respondent's motion; and petitioners having appealed to the Appellate Division, Second Department, and the Appellate Division, Second Department, having reversed the decision and order of the Family Court by decision and order in writing dated November 28, 1988 and having ordered a best interests hearing in this court, and

The matter having duly come before the undersigned for said best interests hearing in this Court on March 3, 1989 upon

remand from said Appellate Division and respondent having declined to participate in said hearing,

NOW THEREFORE, it is

ORDERED AND ADJUDGED that respondent's petition dated April 12, 1988 be and the same hereby is denied; and it is further

ORDERED AND ADJUDGED that the adoption herein be and the same hereby is granted and approved; and it is further

ORDERED that that portion of this final judgment approving the adoption be and the same hereby is stayed pending decision of the Court of Appeals upon any appeal to it from the decision of the Appellate Division, Second Department, dated November 28, 1988 on condition that said appeals be filed on or before July 15, 1989; and it is further

ORDERED that in no event, unless there is agreement by the parties and with the consent of the Court, or if said matter is stayed by the Court of Appeals, shall the stay of the adoption approval continue after August 1, 1990.

ORDERED that this shall constitute the final order and/or judgment in these proceedings.

Dated: MAY 2 1989

ENTER
s/ Carmen J. Cognetta, Jr.
J.F.C.
HON. CARMEN J. COGNETTA, JR.